

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

LOCAL 8027, AFT-NEW HAMPSHIRE, AFL-CIO, RYAN)
RICHMAN, JOHN DUBE and JOCEYLN MERRILL,)
teachers in the New Hampshire Public Schools, and)
KIMBERLY GREEN ELLIOTT and MEGHAN EVELYN)
DURDEN, parents or guardians of children in the New)
Hampshire public schools.)

Plaintiffs,)

v.)

FRANK EDELBLUT, in his Official Capacity as)
Commissioner of the DEPARTMENT OF EDUCATION,)
CHRISTIAN KIM in his Official Capacity as the Chair of the)
NEW HAMPSHIRE COMMISSION ON HUMAN RIGHTS,)
and JOHN FOMELLA in his Official Capacity as)
ATTORNEY GENERAL of the State of New Hampshire.)

Defendants.)

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ANDRES MEJIA,)
CHRISTINA KIM PHILIBOTTE, and)
NATIONAL EDUCATION ASSOCIATION-NEW)
HAMPSHIRE,)

Plaintiffs,)

v.)

FRANK EDELBLUT, in his official capacity only as the)
Commissioner of the New Hampshire Department of)
Education,)

JOHN M. FORMELLA, in his official capacity only as the)
Attorney General of the State of New Hampshire,)

AHNI MALACHI, in her official capacity only as the)
Executive Director of the New Hampshire Commission for)
Human Rights,)

CHRISTIAN KIM, in his official capacity)
only as the Chair of the New Hampshire Commission for)
Human Rights,)

KEN MERRIFIELD, in his official capacity only as the)
Commissioner of the Department of Labor,)

Defendants.)
)

Civil No. 1:21-cv-01077-PB

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs hereby submit this notice of supplemental authority to inform this Court of the U.S. Court of Appeals for the Eleventh Circuit’s March 4, 2024 opinion in *Honeyfund.com, Inc. v. DeSantis*, No. 22-13135, 2024 WL 909379 (11th Cir. Mar. 4, 2024), which affirmed the district court’s preliminary injunction of Florida’s so-called “Individual Freedom Act”—or “Stop WOKE Act”—impacting workplaces. We alert this Court to this decision because Plaintiffs cited the district court’s decision in *Honeyfund* in their summary judgment briefing. Relevant to Plaintiffs’ claims that the challenged New Hampshire law at N.H. Rev. Stat. Ann. (“RSA”) 354-A:29-34 and RSA 193:40 violates the First Amendment based on its prohibition of certain speech in all extracurricular activities, the Eleventh Circuit in *Honeyfund* concluded that “Florida’s law contains an illegal per se ban on speech the state disagrees with,” and thus constitutes impermissible viewpoint and content-based discrimination that fails strict scrutiny. *See* slip op. p. 20; *see also id.* at pp. 7, 15.¹ A copy of the Eleventh Circuit’s opinion is attached to this notice.

¹ The Eleventh Circuit declined to “address the plaintiffs’ vagueness and overbreadth arguments” because the “Act’s speech restrictions fail strict scrutiny.” *See id.* at p. 20 n.6. The Eleventh Circuit also did not address the Florida act’s provision implicating public-school instruction, noting that this “provision is not the subject of this appeal, and nothing in this opinion should be construed as addressing it.” *See id.* at p. 3 n.1.

March 5, 2024

Respectfully Submitted,

/s/ Peter J. Perroni
Peter Perroni (N.H. Bar No. 16250)
NOLAN PERRONI PC
73 Princeton Street
North Chelmsford, MA 01863
(978) 454-3800
peter@nolanperroni.com

Charles G. Moerdler*
Harry Sandick*
Joshua M. Goldman*
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
Tel.: 212.336.2000
cmoerdler@pbwt.com
hsandick@pbwt.com
jgoldman@pbwt.com

Daniel J. McNeil, Esq.*
David Strom, Esq.*
AMERICAN FEDERATION OF TEACHERS
555 New Jersey Ave. NW
Washington DC 20001
Tel.: 202.393.7472
dmcneil@aft.org
dstrom@aft.org

Mark Richard, Esq.*
PHILLIPS, RICHARD & RIND P.A.
9360 S.W. 72nd Street, Suite 283
Miami, FL 33137
Tel.: 305.412.8322
mrichard@phillipsrichard.com

Faith Gay, Esq.*
SELENDY & GAY PLLC
1290 6th Avenue
New York, NY 10104
Tel.: 212.390.9000

fgay@selendygay.com

*Co-Counsel for Local 8027, AFT-New
Hampshire, AFL-CIO, Ryan Richman,
John Dube and Jocelyn Merrill,
teachers in the New Hampshire Public Schools,
and Kimberly Green Elliot and Meghan Evelyn
Durden parents or guardians of children in the
New Hampshire public schools.*

/s/ Gilles R. Bissonnette

Gilles R. Bissonnette (N.H. Bar No. 265393)
Henry R. Klementowicz (N.H. Bar No.
21177)
SangYeob Kim (N.H. Bar No. 266657)
AMERICAN CIVIL LIBERTIES UNION OF NEW
HAMPSHIRE
18 Low Avenue, Concord, NH 03301
Tel. 603.224.5591
gilles@aclu-nh.org

/s/ Chris Erchull

Chris Erchull (N.H. Bar No. 266733)
GLBTQ LEGAL ADVOCATES & DEFENDERS
18 Tremont, Suite 950
Boston, MA 02108
Tel.: 617.426.1350
cerchull@glad.org

Jennifer Eber (N.H. Bar No. 8775)
Kayla Turner (N.H. Bar No. 270167)
DISABILITY RIGHTS CENTER-NEW HAMPSHIRE
64 N Main St, Ste 2
Concord, NH 03301-4913
Tel.: 603.228.0432
JenniferE@drcnh.org
kaylat@drcnh.org

*Co-counsel for Plaintiffs Andres Mejia and
Christina Kim Philibotte*

/s/ Morgan C. Nighan

Morgan C. Nighan (N.H. Bar No. 21196)
NIXON PEABODY LLP
Exchange Place
53 State Street
Boston, MA 02109-2835
Tel.: 617.345.1031
mnighan@nixonpeabody.com

/s/ David A. Vicinanza

David A. Vicinanza (N.H. Bar No. 9403)
S. Amy Spencer (N.H. Bar No. 266617)
NIXON PEABODY LLP
900 Elm Street, 14th Floor
Manchester, NH 03101
Tel.: 603.628.4000
dvicinanza@nixonpeabody.com
aspencer@nixonpeabody.com

William E. Christie (N.H. Bar No. 11255)
SHAHEEN & GORDON, P.A.
107 Storrs Street
P.O. Box 2703
Concord, NH 03302
Tel.: 603.225.7262
wchristie@shaheengordon.com

Emerson Sykes*
Speech, Privacy, and Technology Project
Leah Watson*
Sarah Hinger*
Racial Justice Program
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: 212.549.2500
esykes@aclu.org
lwatson@aclu.org
shinger@aclu.org

/s/ Jason Walta

Alice O'Brien*

Jason Walta*

NATIONAL EDUCATION ASSOCIATION

1201 Sixteenth St. NW

Washington, DC 20036

Tel: 202.822.7035

aobrien@nea.org

jwalta@nea.org

Lauren Snow Chadwick (N.H. Bar No. 20288)

Staff Attorney

NATIONAL EDUCATION ASSOCIATION-

NEW HAMPSHIRE

9 South Spring Street

Concord, NH 03301-2425

Tel.: 603.224.7751

edickinson@nhnea.org

Nathan R. Fennessy (N.H. Bar No. 264672)

PRETI FLAHERTY BELIVEAU & PACHIOS LLP

57 North Main Street

Concord, NH 03301

Tel.: 603.410.1500

rtoland@preti.com

Co-Counsel for National Education Association-New Hampshire

*Admitted *pro hac vice*.